



२८/८/१९८२

# भारत का राजपत्र

## The Gazette of India

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 26]

नई विल्ली, शनिवार, अगस्त 28, 1982/वार 6, 1904

No. 26] NEW DELHI, SATURDAY, AUGUST 28, 1982/BHADRA 6, 1904

इस भाग में भिन्न पृष्ठ संख्या दी जाती है कि यह असम संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्राधिकारी को छोड़ कर) हेतु विविध प्राधिकारियों द्वारा जारी हित पर आदेश और प्रधिकृताएँ

Orders and Notifications issued by Central Authorities (other than  
Administrations of Union Territories)

## भारत निवाचन आयोग

आदेश

नई विल्ली, 7 जूनार्दि, 1982

आ०मा० 107.—निवाचन आयोग का समाधान हो गया है कि नीचे की सारणी के रहम (2) में यथा विनिर्दिष्ट उपर प्रदेश विधान सभा के निवाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निवाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निवाचन लड़ने वाला प्रत्येक अध्यर्थी, सोक प्रतिनिधित्व प्रबित्तियम्, 1951 तथा तद्धीन बनाए गए नियमों द्वारा उक्त आयोग के स्तम्भ (5) में यथा उपर्युक्त रूप में अपने निवाचन अध्यर्थी का कोई भी लेखा दाखिल करने में असकल रहा है,

और उक्त अध्यर्थियों ने स्वयं सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टाकरण नहीं दिया है या उनके द्वारा दिए गए अध्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निवाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यापौलिय नहीं हैं,

अतः अब, निवाचन आयोग उक्त प्रधितियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट अध्यर्थियों को संमर्द के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश का तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

सारणी		कम निवाचन की विधान सभा/ सं० विधिविधान नोंक सभा तिर्यू- चन क्षेत्र की क्र०	तिर्यूक नड़ने वाले अध्यर्थी का नाम व पता	निवाचन का सं० और नाम
1	2	3	4	5

1.	उत्तर प्रदेश	295-मोगनीपुर विधान सभा का (प्र०जा०)	श्री लाल अमृद, ग्राम व प००-	निवाचन अध्ययों का कोई भी लेखा
		साधारण निवाचन 1980	अनन्दीआ,	दाविद न नहीं
			जिन-कानपुर,	किया है। (उत्तर प्रदेश)।
2.	-वही-	-वही-	ओ मुरीण, ग्राम व प०० रार, शिन-कानपुर, (उत्तर प्रदेश)।	-वही-
3.	-वही-	374-कोप	श्री हुकम मिह, निशाला ग्राम आलमपुर, दोरकापुर, प०० मुरीणा,	-वही-
			जिन-बुन्देशहर (उत्तर प्रदेश)।	

[सं० 76/उ०प्र०दिं०स०/८०(1)]

**ELECTION COMMISSION OF INDIA**  
**ORDERS**

New Delhi, the 7th July, 1982

**O. N. 107.**—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Uttar Pradesh Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. Particulars of No. election	S.No. & name of the assembly constituency	Name and address of the contesting candidat	Reason for disqualification	
1	2	3	4	5
1. General Election to Uttar Pradesh Legislative Assembly, 1980.	295-Bhognipur (SC)	Shri Lal Chandra, Vill. & P.O.—Amroda, Distt. Kanpur, U.P.	Failure to lodge any account of election expenses.	
2. -do-	-do-	Shri Suresh, Vill. & P.O. Rar, Distt.—Kanpur, U.P.	-do-	
3. -do-	374-Koil (SC).	Shri Hukum Singh, Resident of Village Alampur, Daryapur, P.O. Surjawali, Distt. Bulandshahr, U.P.	-do-	

[No. 76/UP-LA/80(1)]

**आठवा० 108.**—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिविष्ट उत्तर प्रवेश विधान सभा के निर्वाचन क्षेत्र के लिए जो स्तम्भ (3) में विनिविष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके मामले विनिविष्ट निर्वाचन लड़ने वाला अधिकारी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित समय के भीतर और गीति में उक्त मारणी के स्तम्भ (5) में यथा उद्दिष्ट स्पष्ट में अवसर निर्वाचन आयोग का लेखा वाखिल करने में असफल रहा है,

और उक्त अधिकारी ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अवश्यकरण नहीं दिया है तथा निर्वाचन

आयोग का यह समाधान हो गया है कि उसके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यावेचित्य नहीं है,

अतः अश्व, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के प्रत्युत्तरण में निम्नों का मारणी के स्तम्भ (4) में विनिविष्ट अधिकारी को सम्बद्ध के किसी भी सदृश के या किसी राज्य की विधान सभा अधिकारी विधान परिषद के सदस्य चुने जाने और होने के लिए इस प्रदेश की तरीक्षा में तोड़ने वर्ष का कालावधि के लिए निरर्हित घोषित करता है।

**सत्रणी**

क्रम निर्वाचन का सं. विधान सभा/ लोक सभा निर्वा- चन क्षेत्र की क्र. सं. और नाम	विधान सभा/ लोक सभा निर्वाचन, 1980	निर्वाचन लड़ने वाले अधिकारी का नाम अ. पना	निर्वाचन लड़ने वाले अधिकारी का नाम अ. पना	
1	2	3	4	5
1. उत्तर प्रदेश	198-सूरार्हा	श्री भगिराती, ग्राम विरचटकोन्हा-लेखा समय के वलिया, पो जबही अन्दर तथा गीति व्याल, जिवा-देवरिया।	श्री भगिराती, ग्राम विरचटकोन्हा-लेखा समय के वलिया, पो जबही अन्दर तथा गीति व्याल, जिवा-देवरिया।	[सं० उ०प्र०वि०स०/198/80(2)]

ओ०ना० नागर, अवर. मन्त्रि भारत निर्वाचन आयोग।

**O. N. 108.**—Whereas the Election Commission is satisfied that the contesting candidate specified in column (4) of the Table below at the election to the Uttar Pradesh Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate, even after due notice, has not furnished any reason or explanation for the said failure and the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. Particulars of No. election	S. No. & name of the Assembly Constituency	Name & address of the contesting candidate	Reason for disqualification	
1	2	3	4	5
1. General Election to Uttar Pradesh Legislative Assembly, 1980.	198-Seorali	Shri Bhagirathi, Vill. Birwat Konhawalia, P.O. Jubbi—Dayal Distt. Deoria, U.P.	Failure to lodge the account within the time and in the manner required by law.	

[No. UP-LA/198/80(2)]

O.N. NAGAR, Under Secy.  
Election Commission of India

नई फ़िल्मी, 10 अगस्त, 1982

आ. अ. 109 :—लोक प्रतिनिधित्व अधिनियम, 1951 की भारा 106 (1951 का 43) के अनुसरण में निवाचन आयोग, 1980 की निवाचन अर्जीं सं. 2 में दिया गया उच्च न्यायालय, त्रिपुरा, अगरतला को तारीख 15 मार्च, 1982 का आदेश प्रकाशित करता है।

[मं. 82/त्रिपुरा-लॉ. म./2/80]

सतीष चन्द्र जैन, अवर सचिव,

भारत निवाचन आयोग।

New Delhi, the 10th August, 1982

**O.N. 109.**—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgement dated 15-3-1982 of the Gauhati High Court, Agartala Bench, Tripura in Election Petition No. 2 of 1980.

(Here print the Judgement attached)

#### IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura)

Agartala Bench.

Election Petition No. 2 of 1980

Sri Ashoke Kumar Bhattacharjee ...Petitioner.

Versus

Sri Ajoy Biswas and 7 others . Respondents.

PRESENT :

The Hon'ble Mr. Justice N. Ibotombi Singh.

For the Petitioner—Mr. A. M. Majumder, Advocate

General, Assam.

Mr. P. Prasad,

Mr. D. Purkayastha,

Mr. D. K. Sarkar,

Mr. A. K. Panja,

Mr. R. P. Majumder,

Mr. R. P. Kakoti, Advocates.

For the Respondent No. 1—Mr. S. Ganguli, Senior Advocate.

Mr. D. P. Kundu, Advocate General, Tripura.

Mr. B. Das,

Mr. S. Deb,

Mr. U. Saha, Advocates.

For the Respondent No. 3—Mr. A. Chakraborty, Advocate.

For the Respondent Nos. 6, 7 and 8—Mr. P. K. Majumder, Government Advocate.

Date of hearing—6-1-82, 7-1-82, 27-1-82, 28-1-82.

Date of Judgment—15-3-82.

#### JUDGMENT

The Petitioner is an elector of 7 Ramnagar Assembly Segment in the West Tripura Parliamentary Constituency. He contested the mid-term Lok Sabha Election held in 1980 from the West Tripura Parliamentary Constituency as a nominee of Congress(I). There were six candidates including the petitioner in the field. The respondent No. 1 Sri Ajoy Biswas, was a nominee of C.P.I.(M). The date for filing nomination was 8-12-79; the date of scrutiny of the nomination was 11-12-79; and the date of withdrawal was 13-12-79. The polling was held on 6-1-80, and the result of the election was declared on 8-1-80. The main contest was between the petitioner and the respondent No. 1. Respondent No. 1 secured 1,98,335

votes as against the petitioner who secured 1,42,990 votes. The respondent No. 1, having secured the highest number of votes was declared elected. The petitioner filed this election petition challenging the election of the respondent No. 1, on various grounds of corrupt practices alleged to have been committed by him. It was also pleaded, inter-alia, that the respondent No. 1 was disqualified for being chosen as, and for being a member of the House of People, as he held an office of profit under the Government of Tripura, within the meaning of Article 102(1)(a) of the Constitution. A number of issues were framed in the petition on the pleadings of the parties, but the petition has not pressed the other issues except the issue relating to the disqualification of the respondent No. 1. Only one issue as such survived, namely :

"Whether the respondent No. 1 was holding the office of the Accountant-In-Charge under the Agartala Municipality on the date of filing his nomination paper ? If so, whether he was disqualified from being chosen as a Member to the House of People, having held an office of profit under the State Government of Tripura, within the meaning of Article 102 of the Constitution, as alleged in para 9 of the petition read with paras 14(a), 14(b), 14(c), 14(d), 14(e) and 14(f) of the particulars thereof ? If the question above is answered in the affirmative and in favour of the petitioner, what relief the petitioner is entitled to ?

2. It is not disputed that on the date of the filing the nomination paper, the respondent No. 1 was holding the post of the Assistant Accountant and was Accountant-in-charge under the Agartala Municipality constituted under the Bengal Municipal Act, 1932 (Bengal Act XV of 1932), as extended to the State of Tripura and was drawing a monthly salary of Rs. 200.00. On the date of the scrutiny, an objection was raised by the petitioner about the candidature of the respondent No. 1 on the ground of disqualification under Article 102(1)(a) of the Constitution, but the objection was overruled by the Returning Officer.

3. A few facts bearing on the issue above may be stated. The respondent No. 1 entered the service of the Agartala Municipality and held the post carrying the scale of pay of Rs. 80—180 per month. In 1975 the Commissioners of the Agartala Municipality were under supersession by an order of the State Government made under section 553 of the Municipal Act. The consequence of supersession is provided for in section 554 of the Act. It provides that while the order of supersession was in force, all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners; and all the powers and duties which may, under the provisions of the Act or any other Act or any Ordinance or any Regulation, or any Rule, bye-laws, Order or Notification or subsidiary legislation made under the provisions of this Act or such other Act or such Ordinance or such Regulation be exercised and performed by the Chairman and by the Commissioners, shall, during the period of super-session, be exercised by an Administrator appointed by the State Government under section 554 of the Act. The respondent No. 1, who was under suspension was dismissed from service in the disciplinary proceeding against him, by the Administrator of the Agartala Municipality on 20-12-75. The State Government confirmed the order of dismissal. While the Left Front Government was in power in the State of Tripura, the respondent No. 1 was re-instated to the post of the Accountant-In-Charge, Agartala Municipality on 6th May, 1978, with immediate effect by the Administrator, Agartala Municipality.

4. Proviso (II) to Section 66(2) of the Municipal Act provides that no appointment carrying a monthly salary of Rs. 200.00 or a salary rising by periodical increments to more than 200.00 rupees shall be created without the sanction of the State Government, and every nomination to, and dismissal from, any such nomination shall be subject to confirmation by the State Government. As the respondent No. 1 was drawing a monthly salary of more than 200.00 rupees in 1975, he was dismissed from service with the confirmation of the State Government. Subsequently, the Deputy Secretary to the Government of Tripura in his letter no. F16-LSJ/77, dated 6th May, 1978, conveyed to the Administrator, Agartala Municipality, decision of the Government for cancellation of the order of confirmation of the dismissal communicated to him on 19-12-75. Consequent upon the cancellation

of the order of confirmation aforesaid, the administrator, Agartala Municipality, reinstated him to the post of the Accountant-In-Charge, Agartala Municipality with immediate effect, directing that the period between the period of dismissal and the re-appointment would be treated as period spent on duty for all purposes. By another office order of the same date, the Administrator held that his suspension stood cancelled and the period of suspension would be treated as on duty. On these facts, the petitioner raised the plea that the respondent No. 1 was holding the office of profit under the State Government.

5. Evidence was led on behalf of the petitioner in support of the above plea by examining himself as P.W. 1 and the Executive Officer of the Agartala Municipality, Sri Phanibhusan Bhattacharjee as P.W. 1. Respondent No. 1 did not examine any witness in his defence. Before discussing the cases cited at the Bar on the issue above, it may be pertinent to examine the nature and character of the Agartala Municipality.

6. The Act provides that there shall be establishment for each Municipality a body of Commissioners having authority over the municipality and consisting of such members of Commissioners, not being more than twenty nor less than six as the State Government may specify in the notification constituting the municipality. Such Commissioners shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the Municipality is known, having perpetual succession and a common seal, and by that name shall sue and be sued. The Municipality consists of the elected Commissioners. A Chairman is elected by the Commissioners from amongst the Commissioners within 30 days from the date of publication of the result of the general election of the Commissioners in the Municipality failing which the State Government has the power to appoint one of the Commissioners to be Chairman. A Vice Chairman is also elected from amongst the Commissioners. Except as otherwise provided, the Chairman is empowered with certain limitations to transact the business connected with the Act and exercise all the powers vested in the Commissioners under the Act. The Commissioners are to hold office for four years commencing from the date of the first meeting of the newly formed body of Commissioners after a general election of Commissioners in the Municipality at which a quorum is present. An elected Chairman or Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners as laid down in section 61(2) and (3) of the Act. The State Government may remove an elected Commissioner on certain grounds set out in section 62 of the Act.

7. Section 66 which is relevant for the purpose is in following terms

"66. Appointment of Subordinate Officers—(1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder from time to time, determine what officers and what servants of the Commissioners are necessary for the municipality and may fix the salaries and allowances to be paid and granted to such officers and servants.

(2) Subject to the scale of establishment approved by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place.

Provided as follows :

(i) a person shall not be appointed to an office carrying monthly salary of more than twenty rupees shall not be dismissed without such sanction;

(ii) no appointment carrying a monthly salary of more than two hundred rupees or a salary rising by periodical increments to more than two hundred rupees shall be created without the sanction of the State Government, and every nomination to, and dismissal from, any such appointment shall be subject to confirmation by the State Government;

(iii) no person holding an office carrying a monthly salary of one hundred rupees or more shall be dismissed unless such dismissal is sanctioned by a resolution of the Commissioners passed at a

special meeting shall for the purpose and, except with the consent of the State Government unless such resolution has been supported by the votes of not less than two-thirds of the total number of Commissioners holding office for the time being.

(3) Notwithstanding anything contained in sub-section (2), the creation of and nomination to or suspension, removal or dismissal from, the post of Executive Officer shall, irrespective of the salary assigned to the post, be subject to confirmation by the State Government."

8. Besides the officers and the servants mentioned above, all or any of the officers mentioned in section 67 may be appointed by the Commissioners. In certain circumstances, the State Government may declare that the Municipality shall have an Executive Officer for such period as may be specified in the Notification and such Executive Officer shall be appointed by the State Government and shall be paid out of the Municipal fund such salary and allowances as may from time to time be fixed by the State Government. Section 93 provides that as soon as may be after the first day of April in every year not later than such date as may be fixed by the State Government, the Commissioners shall submit to the State Government a report on the administration of the Municipality during the preceding year in such form and with such details as the State Government may direct, and a copy of the report shall also be submitted by the Commissioners to the District Magistrate. The Commissioners of a Municipality may acquire and hold property within or without the limits of the Municipality, and all property within the Municipality of the nature specified in section 95, other than property maintained by the Central Government or any other local Authority, are vested in and belonged to the Commissioners, and are under their direct management and control. By section 102 of the Act, the Commissioners are empowered to purchase, take on lease or otherwise acquire any land for the purposes of the said Act, and may sell, lease, exchange or otherwise dispose of any land not required for such purposes. They are also empowered to enter into and perform any contract necessary for the purposes of the Act. A fund called the Municipal fund is constituted for each Municipality, and all sums received by or on behalf of the Commissioners under this Act or otherwise, and the balance, if any, standing at the credit of the Municipal fund of the Municipality at the commencement of the Act, are credited to the said fund. The purposes to which the Municipal fund is applicable are enumerated in Section 108 of the Act. If any work is estimated to cost above ten thousand rupees, the State Government may require the plan and estimates of such works to be submitted for its approval, or for the approval of any servant of the Government before such work in such form as it may prescribe.

9. The Commissioners are empowered subject to the provisions of the Act to impose within the limits of the Municipality rates, taxes, tolls and fees or any of them under section 123 of the Act, and make assessment of the rates on the annual value of the holdings under section 128 of the Act. Powers are conferred to impose taxes on the owner of every carriage, horse and other animals mentioned in the schedule to the Act, kept or used in the ordinary course of business within, or which is let for hire within or without the Municipality, and is used in the ordinary course of business within it, at such rate as may be fixed. Power has also been given to impose taxes on profession, trade and calling specified in section 182 of the Act. There are other provisions for raising fund for the Municipality by way of charging fee for registration etc. In short, various provisions are made to raise funds for the Municipality for carrying out the purposes of the Act.

10. A survey of the Act leads to the irresistible conclusion that the Agartala Municipality is a 'local authority' within the meaning of that expression defined in clause (31) of section 3 of the General Clauses Act, 1897. It appears to me that it is not necessary to consider the validity or otherwise of the Government's decision conveyed to the Administrator, Agartala Municipality, in May, 1978, for cancellation of the order of confirmation of the dismissal of the petitioner from service and his re-intatement to the post by the Administrator consequent upon such cancellation. His past history is irrelevant for determination of the question posed in this case. What is material is whether on the date of the nomination on 8-12-1979, the respondent No. 1 was holding the office of profit under the State Government.

11. A reading of section 66 of the Act reproduced above makes it abundantly clear that the appointment of persons to the category of post held by the respondent No. 1 is made by the Commissioners of Municipality, though the appointment is subject to confirmation by the State Government. He is an officer of the Commissioners. Section 68 of the Act expressly provides that such officers and servants of the Commissioners shall be subordinate to the Executive Officer appointed by the Commissioners. Though certain powers are conferred on the State Government for general control on such Municipal bodies, the Municipality under the Act does not perform its function for the Government.

12. The Supreme Court in the case of Surya Kanta Roy vs. Imamul Hai Khan, AIR 1975 SC 1053, had occasion to consider a similar question. In that case, under the Bihar and Orissa Mining Settlement Act, 1920, a Board called the Mines Board of Health was established to provide for the control and sanitation of an area within which persons employed in the mine reside and for the prevention therein of the outbreak and spread of epidemic diseases. The Board is a corporate body having perpetual succession and a common seal with power to acquire and hold property. The Chairman of the Board is to be appointed by the State Government from amongst the members of the Board. The Board can also impose taxes like latrine taxes and also make yearly assessment. There are certain powers conferred on the State Government under the Act but they are no more than powers conferred on the State Governments in respect of various local bodies. The respondent was appointed by the Government as a Chairman of the Jharia Mines Board of Health. His election to the Legislative Assembly of Bihar State was questioned on the ground that he held office of profit under the State Government, within the meaning of Article 19(1)(a) of the Constitution. Repealing the argument of the unsuccessful candidate who challenged the election of the respondent therein, the Supreme Court held that the mere fact that he was appointed Chairman of the Board by the State Government would not make him a person holding an office of profit under the State Government. The Supreme Court referred to its earlier decision in Shivamurthy Swami vs. Agadi Sanganna Andanappa (1971(3) SCC 870), wherein the court pointed out :

"The office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. This Court in several decisions had laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. These tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government; and (5) Does the Government exercise any control over the performances of these functions?"

13. The Supreme Court proceeded and observed at page 1504 :

"Here again it is to be pointed out that the Government does not pay the remuneration nor does the holder perform his functions for the Government. To hold otherwise would be to hold that local bodies like Municipal counsels perform their functions for the Government though in one sense the functions they perform are governmental functions."

(underlining supplied)

14. Payment of remuneration of the Accountant of the Agartala Municipality is not from out of the Government revenues but his salaries and allowances are paid from the Municipal fund. He does not perform his functions for the State Government. The observation made by the Supreme Court in Abdul Shakur vs. Rikhabchand, AIR 1958 SC 52 at page 55, which the Supreme Court approved in Surya Kanta (supra), is instructive :

"The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and

payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government."

Here appointment of the respondent No. 1 as Accountant-in-Charge under the Municipality is not vested in the Government nor has the Government power to appoint him to such an office or to continue him in that office or revoke his appointment at its discretion. Appointment of persons to such category of posts and their dismissal are vested in the Commissioners of the Municipality, though it is subject to the confirmation by the State Government.

15. The Supreme Court in D. R. Gurushanthappa vs. Abdul Khuddus Anwar and others, AIR 1969 S.C. 744 pointed out the distinction between the Article 58(2), and Article 66(4) of the Constitution, on one hand and Articles 101(1) and 191(1)(a) of the Constitution, on the other. The distinction has much significance in examining the content of the Article 102(1)(a). It was affirmed by the Supreme Court in Surya Kanta (supra). In Gurushan Thappa (supra), it was observed :

"Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Government and not direct under any of the Governments. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government. The mere control of the Government over the authority having the power to appoint, dismiss or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President." (Underlining supplied.)

16. Undoubtedly the office held by the respondent No. 1 is under the Agartala Municipality. The holding of an office of profit under it does not bring about a disqualification even if that local authority be under the control of the Government. The mere control of the Government over the Agartala Municipality having the power to appoint, dismiss or control the working of the officer employed by Municipality does not disqualify the Respondent from being a candidate for election as a member of the House of People. The control exercised by the State Government over the Agartala Municipality does not make the Municipality an organ of the Government nor does it make the respondent No. 1 a person holding an office of profit under the Government.

17. In D. R. Gurushan Thappa (supra), the respondent whose election was challenged, was holding the post of the Superintendent under a Company and was working as such in 1967 when the election was held. 100 per cent of the shares of the Company was held by Mysore Government. The Supreme Court held that the mere fact that the Government had control over the Managing Director and other Directors as well and had also power of issuing directions relating to the working of the company could not lead to the inference that every employee of the Company was under the control of the Government; the power of appointment and dismissal of the respondent was vested in the Managing Director and not in the Government; direction for day-to-day work to be performed by the respondent could only be issued by the Managing Director and not by the Government and the indirect control of the Government which might arise because of the power of the Government to appoint the Managing Director and to issue directions to the company in its general working would not bring respondent directly under the control of the Government.

18. In the instant case also, there is general control by the State Government over the Agartala Municipality, as envisaged in the Act. But the day-to-day work to be performed by the respondent No. 1 is under the control of the Executive

Officer and the Commissioners of the Municipality. The Agartala Municipality cannot be treated as either being equivalent to the Government or to be the agent of the Government.

19. Counsel for the petitioner strongly relied on the decision of the Supreme Court in Madhukar G.E. Pankakar vs. Jaswant Chobildas Rajani, AIR 1976 SC 2283, in support of his contention that the respondent No. 1 held office of profit under the Government of Tripura. The Supreme Court surveyed its earlier decisions bearing on this question, but it has not laid down a new test. It re-affirmed the principles laid down in the earlier cases. In that case, the return candidate was a Medical practitioner working as panel doctor under Employees' State Insurance Scheme. His election as President of the Municipal Council under the Maharashtra Municipalities Act, 1965, was challenged on the ground that he held 'office of profit' under the Government. It was observed at page 2290 :

"After all, law is a means to an end. What is the legislative and here in disqualifying holders of 'offices of profit under Government'? Obviously, to avoid a conflict between duty and interest, to cut out the misuse of official position to advance private benefit and to avert the likelihood of influencing government to promote personal advantage. So this is the mischief to be suppressed."

The Supreme Court approved the observation of the Bombay High Court in Deorao vs. Keshav, AIR 1953 Bombay 314 on this point :

"The object of this provision is to secure independence of the members of the Legislature and to ensure that the Legislature does not contain persons, who have received favours or benefits from the Executive and who, consequently, being under an obligation to the executive, might be amenable to its influence. Putting it differently, the provision appears to have been made in order to eliminate or reduce the risk of conflict between duty and self-interest amongst the members of the Legislature. This object must always be borne in mind in interpreting Art. 191."

20. The Supreme Court held that though it was fair to hold that the Insurance Medical practitioner was not a free-lancer but subject to duties, obligations, control and rates of remuneration under the overall supervision and powers of Government, he was held no functioning under the Government in the plenary sense implied in electoral disqualification; and the court pointed out that after all, the means, i.e. the ban on candidature, must have a substantial link with the end viz., the possible misuse of position as Insurance Medical Practitioner in doing his duties as Municipal President. The court concluded that it was not possible in the circumstances to hold that those doctors, though subject to responsibilities, eligible to remuneration and liable to removal—all with a government savour—could squarely fall under the expression holding, OFFICE OF PROFIT under the Government.

21. In the instant case, there is not even indirect control over the respondent No. 1 by the Government, nor do I find any substantial link between the ban on his candidature with the end pointed out by the Supreme Court in the above case.

22. Learned counsel for the petitioner drew my attention to Rule 12 of the Agartala Municipal Employees' (Appointment and Conditions of Services) Rules, 1971, which, inter-alia, prohibits the employees from participating in the work of any political party. It provides in clause (n) of Rule 12 that an incumbent is liable to be removed or dismissed from service, if he is found guilty of the charge of active participation in the work of any political party. Counsel submits that the Rule is intended to conserve undivided attention upon their duties as such employees and to avert the likelihood of influencing Government to promote personal advantage, when the political party to which they belong is in the seat of power. As the object of Article 102(1)(a) of the Constitution is to secure independence of the members of the Legislature and to ensure that Legislature does not contain persons, who have received favours or benefits from the Executive, it was urged that section 66(2)(ii) of the Municipal Act and Rule 12(n) of the Employees' Rules, should be so construed as imposing a ban on the candidature.

23. The contention has no substance. The Rule simply lays down a rule of conduct for an employee of the Municipality, and it does not entail disqualification on his candidature. The decision of the Supreme Court in Manohar Nathusao Samarth vs. Marotrao and ors., AIR 1979 SC 1084, is a complete answer to such a contention. In that case, the Supreme Court was concerned with the scope of Regulation 25 of the Life Insurance Corporation of India (Staff) Regulations, 1960, which put an embargo on taking part in Municipal elections, save with the permission of the Chairman. The Supreme Court held that the ineligibility must flow from a specific provision of law designed to deny eligibility or to lay down disqualification; if a Rule of conduct makes it undesirable, objectionable, or punishable for an employee to participate in elections to a local authority, it is a distortion, even an exaggeration out of proportion of that provision to extract out of it a prohibition of a citizen's franchise to be member in the shape of a disqualification from becoming a member of a local authority and the thrust of Regulation 25 is disciplinary and not disqualificatory.

24. For the foregoing reasons, I hold that the first Respondent did not hold an office of profit under the Government of Tripura on the date of filing his nomination paper, and as such, he was not disqualified for being chosen as, and for being, a member of the House of People, within the meaning of Article 102(1)(a) of the Constitution. In the result, the election petition is dismissed. The first respondent will be entitled to his costs which I fix at Rs. 500.00. The other respondents will bear their respective costs.

N. IBOTOMBI SINGH, Judge

[No. 82/TR-HP/2/80]

S. C. JAIN, Under Secy.  
Election Commission of India